UNITED STATES PATENT AND TRADEMARK OFFICE

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09/773,393	01/31/2001	Gregory Warren Goodknight	2705-155	4235

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EXAMINER
MILLS, DONALD L

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte GREGORY WARREN GOODKNIGHT

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Appeal 2009-001200
Application 09/773,393
Technology Center 2400

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Decided: March 31, 2010

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Before KENNETH W. HAIRSTON, MARC S. HOFF

and KARL D. EASTHOM, *Administrative Patent Judges.*

HAIRSTON, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final
rejection of claims 22[1] to 31.

The disclosed invention relates to a network device and method in
which a network device determines whether another device is a packet

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[1] Claims 23 to 26 improperly depend from cancelled claim 1.

device that can receive packet data over a public switched telephone network via a signal received from the other device. If the network device determines from the received signal that the other device is a packet device that can receive packet data, then the network device sends the packet data stream to the other device. On the other hand, if the network device determines from the received signal that the other device is not a packet device and cannot receive packet data, then the network device will send an altered data stream to the other device (Figs 2-4; Spec. 2-7).

Claim 22 is representative of the claims on appeal, and it reads as follows:

22. A network device, comprising:

a converter to receive a packet data stream intended for a packet domain and to convert the packet data stream into an altered data stream intended for transmission through a public switched telephone network; and

a controller to:

establish a connection through the public switched telephone network with at least one other network device using the altered data stream;

send signals through the converter in the altered data stream identifying the network device as a packet device that can receive packet data;

determine, using signals received from one of the other network devices, whether the other network device is a packet device that can receive packet data;

send the packet data stream to the other network device, if the network device determines that the other network device is a packet device that can receive packet data; and

send the altered data stream to the other network device, if the network device determines that the other network device is not a packet device and cannot receive packet data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Series V: Data Communication Over the Telephone Network, ITU-T V.8*bis,* Sept. 25, 1998, pp. 1-43.

The Examiner rejected claims 22 to 31 under 35 U.S.C. § 102(a) based upon the teachings of the ITU-T V.8*bis* publication.

The Examiner contends (Final Rej. 2-5) that the ITU-T V.8*bis* publication describes all of the device limitations and method steps set forth in the claims on appeal. In response, Appellant argues (App. Br. 6-8) that: Appendix 1 in the publication describes "switching between normal voice telephony and modem-based communications;" the modem converts data to modem tones for transmission across the PSTN as "*an altered data stream;*" and the sending of a packet data stream or an altered data stream in response to a determination of whether the other device is a device that can receive packet data is not taught by the publication.

The ITU-T V.8*bis* publication clearly explains that it is concerned with: telephony mode over the PSTN (sections 5, and 6.1); voice calls over the PSTN (sections 9.2.1, 10.1, and Appendix 1.1-1.3); and switching from voice telephony mode to a data mode (Appendix 1.5, 1.6, and 1.9). Thus,

we agree with Appellant's argument (Reply Br. 3) that "nowhere in the ITU-T Recommendation does it disclose switching to a mode where data is transmitted as a *packet data stream*," (i.e., upon a determination that the other network device is a packet device that can receive packet data), as claim 22 requires.

In summary, the anticipation rejection of claims 22 to 31 is reversed because each and every limitation in the claims is not found either expressly or inherently in the cited ITU-T V.8*bis* publication. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

The decision of the Examiner is reversed.

<u>REVERSED</u>

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